

TARCZA & ASSOCIATES, L.L.C.
228 St. Charles Avenue
Suite 1310
New Orleans, Louisiana 70130
Tel: (504) 525-6696
Fax: (504) 525-6701
Robert E. Tarcza (LSBN 12655) pro hac vice

Attorney for Louisiana Sheriff's Pension & Relief Fund

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

LEHMAN BROTHERS INC.,

Debtor

Case No.: 08-01420 (JMP) (SIPA)

OBJECTION OF
LOUISIANA SHERIFF'S PENSION & RELIEF FUND

1. On January 28, 2009, Louisiana Sheriff's Pension & Relief Fund (the "Fund") filed claim number 900003376 against Lehman Brothers Inc. ("LBI") relating to payments for foreign currency transactions.

2. LBI filed an objection notice on September 16, 2009 denying the Fund's claim.

3. The Fund and LBSF entered into a foreign exchange transaction that involved an exchange between Japanese Yen and U. S. dollars that was established on June 13, 2008 and had a value date of September 16, 2008 ("First Exchange Transaction"). Under the terms of the agreement, the Fund was to pay 9,678,123 Japanese Yen to LBSF and would receive \$90,000 from LBSF.

4. The Fund and LBSF then entered into a second foreign exchange transaction that also involved an exchange between Japanese Yen and U. S. dollars that was established on July 24, 2008 and had a value date of September 16, 2008 ("Second Exchange Transaction"). Under the terms of

the agreement, the Fund was to pay 5,372,600 Japanese Yen to LBSF and would receive \$50,000 from LBSF.

5. According to the wire instructions provided by “Lehman Brothers” (“Lehman Wire Instructions”), payments to LBSF in Japanese Yen for foreign exchange transactions were to be made to LBI by or on behalf of LBSF. Specifically, counterparties were instructed to send the funds to LBI’s Nostro Account at Citibank, Tokyo. Attached as Exhibit A are the Lehman Wire Instructions which are entitled “Foreign Exchange Standard Settlement Instructions for Lehman Brothers Special Finance Inc. (SLHIUS3S) effective February 14, 2007.”

6. In accordance with the Lehman Wire Instructions, on September 16, 2008, the sending bank for the custodian for the Fund, The Bank of Tokyo Mitsubishi UFJ Ltd. Tokyo, wired to LBI 9,678,123 Japanese Yen for the First Exchange Transaction (wire number TKYU21681) and 5,372,600 Japanese Yen for the Second Exchange Transaction (wire number TKYU21683) to LBI’s account at Citibank, Tokyo. Attached as Exhibit B are trade tickets from the order system of Logan Circle Partners, L.P., an investment adviser to the Fund, showing the details of the wire transfers from the Fund to LBI.

7. However, the Fund did not receive the \$140,000 it was owed under the two foreign exchange transactions. Upon information and belief, LBI is still in possession of the \$140,000 that the Fund wired for the foreign currency transactions. LBI will be unjustly enriched at the expense of the Fund if it does not pay the \$140,000 it owed to the Fund. See Compudyne Corp. v. Shane, 453 F. Supp. 2d 807, 833 (S.D.N.Y. 2006) (noting that counterparties to securities transactions have an unjust enrichment claim for funds transferred for a securities transaction that was never effected). Alternatively, as the Fund transferred the \$140,000 in reliance of a promise by a fiduciary, its securities broker, and LBI would be unjustly enriched by keeping the \$140,000, the Fund is entitled

to a constructive trust on the funds transferred to LBI. *See U. S. v. Lesak*, No. 07-0396, 2009 WL 1788411, slip op. (S.D.N.Y. June 23, 2009) (holding customer was entitled to a constructive trust against a third party on funds transferred to a broker-dealer for a securities purchase that was not effected).

8. Therefore, as the Fund transferred \$140,000 to LBI for the foreign exchange transactions described above in accordance with Lehman's settlement instructions and the Fund did not receive the funds it was promised for the transactions, LBI owes the Fund \$140,000.

Dated: October 15, 2009

/s/ Robert E. Tarcza
Robert E. Tarcza (LSBN 12655) pro hac vice
Tarcza & Associates, L.L.C.
228 St. Charles Avenue
Suite 1310
New Orleans, Louisiana 70130
Email: bobt@tglaw.net
Tel.: (504) 525-6696
Fax: (504) 525-6701